

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

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MAR 19 1999

OFFICE OF  
MANAGING DIRECTOR

86-285

Roy F. Perkins, Jr., Esquire  
1724 Whitewood Lane  
Herndon, VA 20170-2980

Re: Request for Waiver of Regulatory Fees

Dear Mr. Perkins:

This is in response to your request for waiver of the Fiscal Year 1997 regulatory fee and late payment penalty for Radio Stations WHBU(AM) and WAXT(FM) licensed to Clearwater Enterprises, Ltd.. You assert that payment of the regulatory fee and penalty would be a financial hardship, and in support of your waiver request you submitted Income Statements and Balance Sheets for the periods ending September 30, 1997 and December 31, 1996.

The waiver request is untimely. On August 1, 1997, the Commission issued a Public Notice, FY 1997 Mass Media Regulatory Fees, to all licensees, advising them of their Fiscal Year 1997 regulatory fee obligations. Licensees were notified that fee payments were to be received by the Commission by September 19, 1997 and they were advised of their right to request deferment of the fees by September 19, 1997. The Commission in establishing the regulatory fee program said that it would "accept petitions for waiver, reduction and deferments [of the regulatory fees] so long as they are filed no later than the date payment is due." Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5345 ¶ 34 (1994). On April 22, 1998, Clearwater Enterprises, Ltd was advised by letter that the Commission had no record for the payment of its FY 1997 regulatory fee for WHBU and WAXT and that the licensees were to either submit payment or proof of payment. There is no record of a response to the April 22, 1998 letter.

A review of the Commission's records indicates that you have made no attempt to show why you could not have filed a waiver request in a timely manner. Your failure to comply with the Commission's filing rules, has added to the Commission's regulatory burden and you have not made a compelling showing of why the Commission should grant your untimely request for waiver of the fee and late payment penalty. Thus, your untimely waiver request is denied.

Payment of the FY 1997 regulatory fee in the amount of \$600 and the late payment penalty of \$150 for Radio Station WHBU is now due. Payment of the FY 1997 regulatory fee in the amount of \$800

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and the late payment penalty of \$200 for Radio Station WAXT is now due. The aggregate \$1750 fee and penalties should be filed together with a Form FCC 159 (copy enclosed) within 15 days from the date of this letter. You are cautioned, that the failure to submit payment as required, may result in further sanctions and the initiating of a proceeding to recover the fees and penalty pursuant to the provisions of the Debt Collection Act.

If you have any questions concerning payment of the fee and penalty, please call the Chief, Fee Section at (202) 418-1995.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark Reger", with a stylized flourish at the end.

Mark Reger  
Chief Financial Officer

Enclosure

CA00000 BCB-98-095

Jerky

*Law Office*  
ROY F. PERKINS, JR.

Rec'd Fees Section  
9/17/98

1724 WHITEWOOD LANE  
HERNDON, VA 20170-2980

September 16, 1998

(703) 435-9700

Ms. Claudette Pride  
Chief, FCC Fee Section  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

Re: WHBU(AM), Anderson, and WAXT(FM), Alexandria, IN  
Application for Waiver of Regulatory Fees for FY 1997

Dear Ms. Pride

This letter is submitted on behalf of Clearwater Enterprises, Ltd., licensee of Stations WHBU(AM), Anderson, and WAXT(FM), Alexandria, Indiana. It is in response to your letters dated April 22, 1998, to the licensee respecting non-payment of regulatory fees for FY 1997.

Clearwater Enterprises, Ltd., respectfully requests a waiver, pursuant to Section 1.1166 of the rules, of liability for payment of the FY 1997 fees. Stations WHBU and WAXT operated at a cash flow loss throughout FY 1997 and the licensee corporation is insolvent. The stations were able to continue broadcast operation only by the regular infusion of new capital by the licensee's sole stockholder.

In support of the foregoing, the following are submitted:

Attachment A: profit and loss statement (titled 'Income Statement') and balance sheet for the licensee for the nine months ending September 30, 1997.

Attachment B: profit and loss statement (titled 'Income Statement') and year-end balance sheet for the licensee for the year 1996.

Referring to Attachment A, the profit and loss statement shows an operating loss for the nine months ending September 30, 1997, of \$102,549.78. Exclusive of the bookkeeping entries for depreciation (\$18,000), amortization (\$14,422.50) and 'Interest Expense - Shareholders' (\$29,820.65), it reflects an operating loss on a cash flow basis of \$40,306.63.

Moreover, on a cash flow basis the foregoing by no means indicates the insolvent status of the licensee. On a cash flow basis there also must be taken into account principal payments on bank loans. Reference to the balance sheet in Attachment B will show that the licensee owed two bank loans (to American National Bank and Pendleton Bank) on December 31, 1996, totaling \$247,648.23. Reference to the balance sheet in Attachment A will show that on September 30, 1997, those loans had been reduced in amount to the total of \$228,407.11, a reduction in the principal amount of those loans in nine months of \$19,241.12.

The foregoing payments on loans increases the licensee's cash flow operating deficit for the nine months ending September 30, 1997, to \$59,547.75.

Further, Attachments A and B reflect the infusions of capital by the licensee's sole stockholder to pay these cash flow losses and keep the stations operating. The licensee's sole stockholder is Thomas R. Hayth. The balance sheet for December 31, 1996, shows 'Note Payable - Hayth' in the amount of \$191,199.83. The balance sheet for September 30, 1997, shows 'Note Payable - Hayth' in the amount of \$303,404.08. Of the increase in the nine months in the amount owed to Mr. Hayth of \$112,204.25, \$29,820.65 is the bookkeeping entry for interest accrued in that period on the advances he had made (see the profit and loss statement in Attachment A at 'Interest Expense - Shareholders') and, at this time, a bookkeeping entry only. Deducting the bookkeeping entry for accrued interest, the remaining increase in nine months in the amount owed to Mr. Hayth is \$82,383.60. That represents actual money which he advanced to the licensee and/or paid for the benefit of the licensee in nine months to keep the stations operating.

It is almost superfluous to add that the licensee made no payments of dividends, salary or otherwise to its officers, directors and sole stockholder, Mr. Hayth, in 1997 (and has never made any such payments since the stations were acquired by the licensee and its principal, Mr. Hayth, on December 28, 1995).<sup>1</sup>

The financial statements submitted with this application were prepared by Mr. Hayth in his professional capacity as a certified

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1 The profit and loss statement for the nine months ended September 30, 1997, reflects professional fees of \$10,015.13. Of this, \$700 per month, or a total of \$6,300, was paid to Mrs. Thomas R. Hayth, the wife of the sole stockholder, Thomas R. Hayth, for accounting services by her in her professional capacity as an accountant.

Ms. Claudette Pride, Chief, Fee Section  
September 16, 1998

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public accountant.

In establishing its regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee might impose an undue financial burden upon a licensee. Thus, the Commission determined to grant waivers or reductions of its regulatory fees in those instances where a 'petitioner presents a compelling case of financial hardship'. Implementation of Section 9 of the Communications Act, 9 F.C.C. Rcd. 5333, 5346 (1994), reconsideration at 10 F.C.C. Rcd. 12759 (1995).

It is respectfully submitted that the facts submitted here constitute a compelling showing of severe financial hardship warranting waiver of the FY 1997 regulatory fees respecting Stations WHBU(AM), Anderson, and WAXT(FM), Alexandria, Indiana.

Very truly yours,

  
Roy F. Perkins, Jr.